B.   REMARKS

By this amendment, Claims 20, 61 and 84 have been canceled and new Claim 85 has been added. Hence, Claims 1, 3, 5-19, 21-42, 44, 46-60, 62-83 and 85 are pending in this application. The amendments to the claims and the new claim do not add any new matter to this application. All issues raised in the Office Action mailed March 29, 2006 are addressed hereinafter.

REJECTION OF CLAIMS 1, 3, 5-10, 13, 16, 17, 21, 22, 24-27, 29-42, 44, 46-51, 54, 57, 58, 62, 63, 65-68, 70-82 AND 84 UNDER 35 U.S.C. § 103(a)

In the Final Office Action, Claims 1, 3, 5-10, 13, 16, 17, 21, 22, 24-27, 29-42, 44, 46-51, 54, 57, 58, 62, 63, 65-68, 70-82 and 84 were rejected under 35 U.S.C. § 102(e) as being unpatentable over *Elnozahy et al.*, U.S. Patent No. 6,792,459 (hereinafter *"Elnozahy"*). This rejection is now moot with respect to canceled Claim 84. It is respectfully submitted that Claims 1, 3, 5-10, 13, 16, 17, 21, 22, 24-27, 29-42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 and 70-82 are patentable over *Elnozahy* for at least the reasons provided hereinafter.

CLAIM 1

Claim 1 is directed to a method for measuring client side performance that recites:

"intercepting an item generated by an application program executing on a server device
　　that is to be sent over a network to a client process executing on a client device,
　　wherein the intercepting is performed prior to arrival of the item at the client
　　process;
determining a percentage of total items sent to the client process that are to be modified;
determining, based upon the percentage of total items sent to the client process that are to
　　be modified, whether the intercepted item is to be modified; and
if, based upon the percentage of total items sent to the client process that are to be
　　modified, the intercepted item is to be modified, then
　　modifying the intercepted item transparently with respect to the application
　　　　program to produce a modified item that includes code which, when
　　　　processed by one or more processors at the client device causes:
　　　　at the client device, measuring performance related to a service associated
　　　　　　with the item, and
　　　　at the client device, performing one or more acts based on a measurement
　　　　　　resulting from said step of measuring performance, wherein the
　　　　　　one or more acts includes sending data indicating the measurement
　　　　　　to an entity over the network; and

sending the modified item over the network to the client process executing on the client device."

It is respectfully submitted that Claim 1 is patentable over *Elnozahy* because at least the Claim 1 limitations "determining a percentage of total items sent to the client process that are to be modified; determining, based upon the percentage of total items sent to the client process that are to be modified, whether the intercepted item is to be modified; and if, based upon the percentage of total items sent to the client process that are to be modified, the intercepted item is to be modified, then modifying the intercepted item transparently with respect to the application program to produce a modified item" are not taught or suggested by *Elnozahy*. These limitations were added to Claim 1 from Claim 20. The Final Office Action asserted that these limitations are not taught or suggested by *Elnozahy* and rejected Claim 20 based upon *Elnozahy* in combination with *Guthrie*, U.S. Patent No. 6,266,681. Applicant agrees that these limitations are not taught or suggested by *Elnozahy*. It is also respectfully submitted that these limitations are not taught or suggested by *Guthrie*.

Guthrie describes a method for inserting code into HTML documents to allow a user to display an add-on user interface component within a Web page in a manner that is transparent to the user. *Guthrie* describes that the interceptor code 402 monitors HTTP responses transmitted to Web browser 401 by Proxy Server 403 and determines whether the HTTP responses include an HTML document. If so, then interceptor code 402 modifies the contents of the HTML document to inject code. Abstract and Col. 6, lines 25-40. There is no indication in *Guthrie* that the interceptor code 402 determines a percentage of total HTTP responses sent to Web browser 401 that are to be modified and then determines, based upon the percentage, whether an intercepted item is to be modified. To the extent that *Guthrie* teaches or suggests selectively modifying HTTP responses, it is in the context of selecting, for modification, HTTP responses that include an HTML document. There is no mention or suggestion of selecting HTTP responses for modification based upon a percentage of total HTTP responses that are to be modified. It is therefore respectfully submitted that at least the Claim 1 limitations "determining a percentage of total items sent to the client process that are to be modified; determining, based upon the percentage of total items sent to the client process that are to be modified, whether the intercepted item is to be modified; and if, based upon the percentage of total items sent to the

client process that are to be modified, the intercepted item is to be modified, then modifying the intercepted item transparently with respect to the application program to produce a modified item" are not taught or suggested by *Elnozahy* or *Guthrie* and that Claim 1 is therefore patentable over *Elnozahy* and *Guthrie*.

CLAIMS 3, 5-10, 13, 16, 17, 21, 22, 24-27 AND 29-41

Claims 3, 5-10, 13, 16, 17, 21, 22, 24-27 and 29-41 all depend from Claim 1 and include all of the limitations of Claim 1. It is therefore respectfully submitted that Claims 3, 5-10, 13, 16, 17, 21, 22, 24-27 and 29-41 are patentable over *Elnozahy* and *Guthrie* for at least the reasons set forth herein with respect to Claim 1. Furthermore, it is respectfully submitted that Claims 3, 5-10, 13, 16, 17, 21, 22, 24-27 and 29-41 recite additional limitations that independently render them patentable over *Elnozahy* and *Guthrie*.

CLAIMS 42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 AND 70-82

Claim 42 is similar to Claim 1, except in the context of computer-readable medium. It is therefore respectfully submitted that Claim 42 is patentable over *Elnozahy* and *Guthrie* for at least the reasons set forth herein with respect to Claim 1. Claims 44, 46-51, 54, 57, 58, 62, 63, 65-68 and 70-82 all depend from Claim 42 and include all of the limitations of Claim 42. It is therefore respectfully submitted that Claims 42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 and 70-82 are patentable over *Elnozahy* and *Guthrie* for at least the reasons set forth herein with respect to Claim 42.

In view of the foregoing, it is respectfully submitted that Claims 1, 3, 5-10, 13, 16, 17, 21, 22, 24-27, 29-42, 44, 46-51, 54, 57, 58, 62, 63, 65-68 and 70-82 are patentable over *Elnozahy* and *Guthrie*.

REJECTION OF CLAIMS 11, 12, 14, 15, 52, 53, 55, 56 AND 83 UNDER 35 U.S.C. § 103(a)

In the Final Office Action, Claims 11, 12, 14, 15, 52, 53, 55, 56 and 83 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Elnozahy* in view of *Burgess et al.,* U.S. Patent No. 5,696,701 (hereinafter *"Burgess"*). It is respectfully submitted that Claims 11, 12, 14, 15, 52, 53, 55, 56 and 83 are patentable over *Elnozahy* and *Burgess*, considered alone or in combination, for at least the reasons provided hereinafter.

Claims 11, 12, 14 and 15 depend from Claim 1 and include all of the limitations of Claim 1. As previously set forth herein, Claim 1 recites one or more limitations that are not taught or suggested by *Elnozahy*. For example, the Claim 1 limitations "determining a percentage of total items sent to the client process that are to be modified; determining, based upon the percentage of total items sent to the client process that are to be modified, whether the intercepted item is to be modified; and if, based upon the percentage of total items sent to the client process that are to be modified, the intercepted item is to be modified, then modifying the intercepted item transparently with respect to the application program to produce a modified item" are not taught or suggested by *Elnozahy*. It is also respectfully submitted that these limitations are not taught or suggested by *Burgess* and it is understood that *Burgess* was relied upon in the Office Action for the limitations of Claims 11, 12, 14 and 15 and not for these limitations of Claim 1, which were previously in Claim 20. It is therefore respectfully submitted that Claims 11, 12, 14 and 15 are not taught or suggested by *Elnozahy* or *Burgess*, considered alone or in combination, and that Claims 11, 12, 14 and 15 are therefore patentable over *Elnozahy* and *Burgess*. Claims 52, 53, 55 and 56 recite limitations similar to Claims 11, 12, 14 and 15, except in the context of computer-readable media. It is therefore respectfully submitted that Claims 52, 53, 55 and 56 are patentable over *Elnozahy* and *Burgess* for at least the reasons set forth herein with respect to Claim 11, 12, 14 and 15.

Claim 84 recites limitations that, as described herein with respect to Claim 1, are not taught or suggested by *Elnozahy*. For example, Claim 84 recites "determining a percentage of total items sent to the client process that are to be modified; determining, based upon the percentage of total items sent to the client process that are to be modified, whether the intercepted item is to be modified; and if, based upon the percentage of total items sent to the client process that are to be modified, the intercepted item is to be modified, then modifying the intercepted item transparently with respect to the application program to produce a modified

item." It is therefore respectfully submitted that Claim 84 is patentable over *Elnozahy* and *Burgess* for at least the reasons set forth herein with respect to Claim 1.

REJECTION OF CLAIMS 18-20, 23, 28, 59-61, 64 AND 69 UNDER 35 U.S.C. § 103(a)

In the Final Office Action, Claims 18-20, 23, 28, 59-61, 64 and 69 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Elnozahy* in view of *Guthrie*. This rejection is moot with respect to canceled Claims 20 and 61. It is respectfully submitted that Claims 18, 19, 23, 28, 59, 60, 64 and 69 are patentable over *Elnozahy* and *Guthrie*, considered alone or in combination, for at least the reasons provided hereinafter.

Claims 18, 19, 23 and 28 depend from Claim 1 and include all of the limitations of Claim 1. As previously described herein, Claim 1, as amended, recites one or more limitations that are not taught or suggested by *Elnozahy* or *Guthrie*. It is therefore respectfully submitted that Claims 18, 19, 23 and 28 are patentable over *Elnozahy* and *Guthrie* for at least the reasons set forth herein with respect to Claim 1. Claims 59, 60, 64 and 69 recite limitations similar to Claims 18, 19, 23 and 28, except in the context of computer-readable media. It is therefore respectfully submitted that Claims 59, 60, 64 and 69 are patentable over *Elnozahy* and *Guthrie* for at least the reasons set forth herein with respect to Claims 18, 19, 23 and 28.

NEW CLAIM 85

New Claim 85 recites the same limitations as Claim 83, except in the context of a computer-readable medium. It is therefore respectfully submitted that Claim 85 is patentable over the references cited and relied upon for at least the reasons set forth herein with respect to Claim 83.

CONCLUSION

It is respectfully submitted that all of the pending claims are in condition for allowance and the issuance of a notice of allowance is respectfully requested. If there are any additional charges, please charge them to Deposit Account No. 50-1302.

The Examiner is invited to contact the undersigned by telephone if the Examiner believes that such contact would be helpful in furthering the prosecution of this application.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: **Mail Stop RCE**, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450

on June 1, 2006   by _____
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